

REMARKS

Applicants and the undersigned are most grateful for the time and effort accorded the instant application by the Examiner. Claims 1-20 were pending in the instant application at the time of the outstanding Office Action. All claims stand rejected. Reconsideration and withdrawal of these rejections is respectfully requested in light of the foregoing amendments and the following remarks.

It should be noted that Applicants are not conceding in this application that the claims amended or cancelled herein are not patentable over the art cited by the Examiner, as the claim amendments and cancellations presented herein are only for facilitating expeditious prosecution. Applicants respectfully reserve the right to pursue the original and/or other claims in one or more continuations and/or divisional patent applications. Applicants specifically state no amendment to or cancellation of any claim should be construed as a disclaimer of any interest in or right to an equivalent of any element or feature of the amended claim.

Rejections under 35 U.S.C. § 103(a)

Claims 1-20 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Myers et al. (U.S. Patent Publication No. 2003/0079005) (hereinafter “Meyers”) in view of Anerousis et al. (U.S. Patent Publication No. 2004/0210670) (hereinafter “Anerousis”). Applicants respectfully request reconsideration and withdrawal of these rejections.

As an initial matter, the Remarks submitted with Applicants' previous Amendment of October 20, 2008, regarding the subject matter of the instant invention, remain applicable and are therefore incorporated by reference as if fully set forth herein.

As best understood, Myers teaches a method of using an overlay network of dedicated servers to efficiently route data over the Internet or other wide area network based on at least two routing performance characteristics. Myers, *Abstract*, [0016-0023], [0043]. According to Myers, an overlay network is:

[A] virtual network including a group of processors coupled to the target network such as the Internet. The main differentiation between an overlay and other groups of servers is the way that the processors of the overlay (also known as "nodes") model the underlying network

Myers, [0043] (emphasis added). Thus, Myers utilizes a dedicated (overlay) network of servers to accomplish better routing.

Myers stands in stark contrast to the instant invention, wherein a general purpose computer multi-homed to multiple ISPs can perform its own route control functions by selecting the link to the best performing ISP based upon certain metrics (e.g. latency) measured actively or passively at the general purpose computer. *Specification*, p. 1, lines 10-12; p. 3, lines 14-16; p. 6, lines 10-11; p.7, lines 12-13. Furthermore, the general purpose computer controls its own routing functions without involving external network devices or direct interaction with specific network routers. *Specification*, p. 3, lines 14-16.

The instant invention is directed toward "any network-connected general purpose computer," *Specification*, p. 3, line 14, while Myers clearly is not. Myers is specifically

limited to optimizing the routing of data of computers, or “nodes,” that are part of a network overlay system. Myers, *Abstract*, Figures 4-8, [0016], [0021], [0065]. In addition, it is not until the overlay network nodes “are placed at many locations throughout the wide area network, [that] the overlay can control how packets are routed from one portion of the wide area network to another.” Myers, [0046-52]. Furthermore, overlay network nodes have to be placed on each provider network in order for “the overlay to ‘route around’ providers whose networks are currently performing poorly by directing traffic to nodes installed in neighboring nodes.” Myers, [0050].

The instant invention specifically “removes the need for a dedicated route control device and instead permits general purpose computers to perform route control functions themselves.” *Specification*, p. 6, lines 10-11. As stated above, Myers teaches optimizing the routing of data on a wide area network using multiple nodes and servers configured in an overlay network. The overlay nodes and servers that form the foundation of the subject matter taught by Myers are essentially “dedicated route control devices.” Thus, Myers actually teaches away from the instant invention. As recognized by Myers, “[a]n overlay...can consist of just one node.” Myers, [0091]. However, the route optimization method of Myers requires more than one node because multiple nodes, and servers, are required to achieve “routing which utilizes alternate paths” through the Internet, or other wide area network. Myers, [0041]. As such, a general-purpose computer cannot control route control functions itself without the use of other network devices according to the subject matter taught by Myers.

Again, Applicants' previous amendments regarding Anerousis remain applicable here and are therefore incorporated by reference as if fully set forth herein. The instant invention is not obvious in view of Anerousis, either alone or in combination with Myers.

The Examiner is kindly reminded that “[w]hen determining whether a claim is obvious, an examiner must make a searching comparison of the claimed invention – *including all its limitations* – with the teaching of the prior art. Thus, obviousness requires a suggestion of all limitations in a claim. Moreover, as the Supreme Court recently stated, *there must be some articulated reasoning* with some rational underpinning to support the legal conclusion of obviousness.” *Ex parte H. Garrett Wada et al.*, pp. 7, Appeal No. 2007-3733 (BPAI January 14, 2008) (internal quotation marks and citations omitted) (emphasis in original) (reversing Examiner’s obviousness rejection). In addition, as the Examiner is no doubt aware, an obviousness rejection requires a motivation to combine the references and an expectation of success. Not only is there no motivation to combine the references, no expectation of success, but actually combining the references would not produce the claimed invention. Thus, the claimed invention is patentable over the combined references and the state of the art.

When rejecting claim 1 under § 103(a), the Examiner cites Anerousis solely at paragraph [0019] for the proposition that the availability metrics disclosed in Anerousis are sufficient in combination with Myers to form the basis of the rejection of this claim. As discussed above, Myers is lacking much more than the metrics mentioned in paragraph [0019] to teach the subject matter of the instant invention. In addition, paragraph [0019] describes network route selection utilizing a site-specific SLR (Service

Level Router), and “a plurality of host sites (e.g., a server fame [sic] containing a plurality of servers) using system-specific SLR.” Thus, paragraph [0019] actually teaches away from the instant invention in that this paragraph describes, *inter alia*, servers, host cites, and system-specific SLR to route network data as opposed to a general purpose computer controlling its own routing functions without using dedicated route control devices.

Nonetheless, solely in an effort to facilitate expeditious prosecution, Applicants have amended claim 1 to recite, *inter alia*,

A method comprising the steps of:

establishing a connection between a multi-homed network-connected general purpose computer and an arrangement for linking said computer to at least a first and a second internet service internet service provider (ISP);

utilizing one or more of active and passive measuring of relevant performance and availability metrics of links to the at least first and the second ISP at said multi-homed network-connected general purpose computer; and

utilizing the multi-homed network-connected general purpose computer for performing network route control functions, said control functions comprising making a routing control decision at said multi-homed network-connected general purpose computer prior to sending a packet comprising network traffic;

wherein said multi-homed network-connected general purpose computer makes the routing control decision to direct the packet to an outgoing link to one of the first ISP and the second ISP based upon said relevant performance and availability metrics; and

wherein the multi-homed network-connected general purpose computer is configured to perform the control functions without external network appliances and without a dedicated route control device.

Claim 1 (emphasis added). The remaining independent claims have been rewritten to incorporate similar language. This language is intended to clarify that rather than utilizing separate routing control products, *it is the general purpose computer the makes*

the routing control decision, based on relevant metrics as measured at the general purpose computer, and determines to which ISP a packet will go.

In view of the foregoing, Applicants respectfully submit that the instantly claimed invention is clearly distinguishable from the art of record and the state of the art. Applicants therefore respectfully request reconsideration and withdrawal of the rejection under 35 U.S.C. § 103(a).

Newly Presented Claims

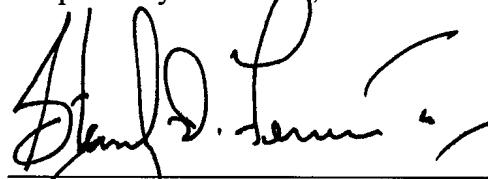
Applicants have presented new claims 21-29 herein. Claim 21 is independent; the remaining claims are dependent. Applicants respectfully submit that Claim 21 is allowable as it is directed toward novel and non-obvious subject matter, not taught or suggested by the art of record or the state of the art, considered alone or in any combination. In addition, Applicants respectfully submit that the remaining claims, in addition to being dependant from what are believed to be allowable independent claims, further contain novel and non-obvious limitations, not taught or suggested by the art of record or the state of the art, considered alone or in any combination. Support for these amendments can be found throughout the specification, particularly at p. 6, line 10 and continuing until p. 9, line 16. Accordingly, Applicants respectfully submit that these newly presented claims are in condition for allowance.

Conclusion

In view of the foregoing, it is respectfully submitted that Independent Claims 1, 19 and 21 fully distinguish over the applied art and are thus allowable. By virtue of dependence from Claims 1 and 19, it is thus also submitted that Claims 2-9 and 22-29 are also allowable at this juncture.

In summary, it is respectfully submitted that the instant application, including Claims 1-9 and 19-29, is presently in condition for allowance. Notice to the effect is hereby earnestly solicited. If there are any further issues in this application, the Examiner is invited to contact the undersigned at the telephone number listed below.

Respectfully submitted,



Stanley D. Ference III
Registration No. 33,879

Customer No. 47049
FERENCE & ASSOCIATES LLC
409 Broad Street
Pittsburgh, Pennsylvania 15143
(412) 741-8400
(412) 741-9292 - Facsimile

Attorneys for Applicants